

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD L. SIMS,

Defendant-Appellant.

UNPUBLISHED
October 15, 1999

No. 208837
Recorder's Court
LC No. 96-008870

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750b(1)(f); MSA 28.788(2)(1)(f), and sentenced to three concurrent terms of eight to twenty years' imprisonment. He appeals as of right and we affirm.

First, contrary to what defendant argues, the trial court did not prevent defense counsel from moving for a directed verdict. Rather, the trial court properly indicated that a motion for directed verdict must be denied because the evidence, viewed most favorably to the prosecution, was sufficient to enable a rational trier of fact to find the essential elements of the charged crimes beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997). In so ruling, the trial court properly observed that questions regarding the credibility of witnesses are left to the trier of fact. *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997). Indeed, even defense counsel acknowledged that a directed verdict is inappropriate when the case turns on the credibility of the witnesses.

Second, there is no merit to defendant's contention that the trial court refused to consider the examining physician's testimony. The record indicates that the trial court merely suggested that the physician's testimony regarding whether the victim had been beaten repeatedly about the face conflicted with that proffered by the victim herself. Considering that the trial court in a bench trial assumes the role of the trier of fact, the trial court was free to accept or reject any part of the physician's testimony in reaching a verdict. MCR 2.613(C); *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

Third, defendant argues that the testimony of the victim's mother was hearsay; however, this issue is not preserved for appellate review because defendant did not object to the testimony at trial. Error may not be predicated on a ruling admitting evidence unless a substantial right of the party was affected and an objection was made at trial. MRE 103(a)(1). Considering the possible applicability of the excited utterance exception to the hearsay rule, MRE 803(2); *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998), and the fact that the victim testified at trial regarding the circumstances described in her mother's statement, we conclude that a substantial right of defendant was not affected.

Finally, defendant's failure to object to the trial court's restriction of the prosecutor's closing argument precludes appellate review of this issue. Moreover, we find no merit to defendant's claim that, by restricting the prosecutor's closing argument, the trial court failed to decide the case on the basis of the evidence presented at trial.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Kathleen Jansen